

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 24-cv-21433-BLOOM/Elfenbein

NERYN CASTRO,

Plaintiff,

v.

BM ROOFING LLC.,
and BORELY MARTINEZ

Defendants.

ORDER ADOPTING OMNIBUS REPORT & RECOMMENDATION

THIS CAUSE is before the Court on Defendants BM Roofing LLC and Borely Martinez's (collectively "Defendants") Motion to Dismiss Plaintiff's Amended Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim, or in the alternative, Motion for Summary Judgment (the "Motion to Dismiss"), ECF No. [20], and Defendants' First Motion for Sanctions Against Neryn Castro, Elvis J. Adan, Esq., and Gallardo Law Office, P.A. pursuant to Federal Rule of Civil Procedure 11 (the "Motion for Sanctions"), ECF No. [26], (collectively the "Motions"). The Motions were referred to Magistrate Judge Marty Fulgueira Elfenbein for a Report and Recommendation. See generally ECF No. [27]; ECF No. [32]. Judge Elfenbein issued her Omnibus Report & Recommendation ("R & R"), ECF No. [39], recommending that the Motion to Dismiss be granted in part and denied in part and that the Motion for Sanctions be denied. The R&R advised the parties that written objections to the report may be filed with the District Judge within fourteen days of receipt of a copy of the report. *Id.* at 18-19. To date, neither party has filed objections, nor have the parties sought additional time to file objections. The Court has,

nonetheless, conducted a *de novo* review of the R&R, the record in this case, and is otherwise fully advised. *See Williams v. McNeil*, 557 F.3d 1287, 1291 (11th Cir. 2009) (citing 28 U.S.C. § 636(b)(1)).

Upon review, the Court finds Judge Elfenbein's R&R to be well reasoned and correct. The Court agrees with the analysis in the R&R and concludes that Defendants' Motion to Dismiss must be granted in part and denied in part and the Motion for Sanctions must be denied for the reasons set forth therein.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The R & R, **ECF No. [39]**, is **ADOPTED**;
2. Defendants' Motion to Dismiss, **ECF No. [20]**, is **GRANTED IN PART and DENIED IN PART**;
3. Plaintiff's Amended Complaint, **ECF No. [12]**, is **DISMISSED WITHOUT PREJUDICE**, and Plaintiff shall file a Second Amended Complaint that cures the deficiencies identified in the R & R by **September 23, 2024**; and
4. Defendants' Motion for Sanctions, **ECF No. [26]**, is **DENIED WITHOUT PREJUDICE**.

DONE AND ORDERED in Chambers at Miami, Florida, on September 9, 2024.

A handwritten signature in black ink, appearing to be 'JB' or similar, with a long horizontal stroke extending to the right.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record